

## **REMARKS**

By the above amendment, the specification at page 19 has been amended to recite the feature that the variation of  $\pm 10\%$  in the visible light region for transmittance or reflectance represents, as shown in Fig. 6 a difference between a minimum of -10% and a maximum of +10% or a difference of no more than 20% in the visible light region, as is apparent from both the transmittance spectral characteristics 35a of the diffusion adhesive layer and the reflection spectral characteristics 34 of the metal reflecting layer which are of the flat type in the visible light region. Thus, with respect to the rejection of claims 4 - 6 and 10 - 20 under 35 USC 112, first paragraph, applicants submit that the specification has been amended to utilize terminology as utilized in the claims and which features are clearly supported by Figure 6 of the drawings of this application and the corresponding description in the specification. Accordingly, applicants submit that the rejection of claims 4 - 6 and 10 - 20 under 35 USC 112, first paragraph, should now be overcome. Applicants note, for example, that the specification describes the formation of an aluminum film by a vapor deposition method so as to have the spectral reflection property or characteristics as represented by curve 34 at pages 11 and 12 of the specification and the Examiner's contention concerning undue experimentation has no basis in fact. Accordingly, irrespective of the Examiner's position, applicants submit that the present application including the specification, claims and drawings provide support for the claimed subject matter in the sense of 35 USC 112, first paragraph.

With regard to the rejection of claims 4, 10, 11, 14 and 17 - 20 under 35 USC 103(a) as being unpatentable over Iwata et al (US Patent No. 6,111,699) in view of Miyamoto et al (US Patent No. 6,147,733) and the rejection of claims 5, 6, 12, 13, 15 and 16 under 35 USC 103(a) as being unpatentable over Iwata et al in view of Miyamoto et al and in further view of Woodgate (US Patent No. 6,483,613), such

rejection is traversed insofar as it is applicable to the present claims and reconsideration and withdrawal of the rejections are respectfully requested.

As to the requirements to support a rejection under 35 USC 103, reference is made to the decision of In re Fine, 5 USPQ 2d 1596 (Fed. Cir. 1988), wherein the court pointed out that the PTO has the burden under '103 to establish a prima facie case of obviousness and can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references. As noted by the court, whether a particular combination might be "obvious to try" is not a legitimate test of patentability and obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. As further noted by the court, one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.

Furthermore, such requirements have been clarified in the recent decision of In re Lee, 61 USPQ 2d 1430 (Fed. Cir. 2002) wherein the court in reversing an obviousness rejection indicated that deficiencies of the cited references cannot be remedied with conclusions about what is "basic knowledge" or "common knowledge".

The court pointed out:

The Examiner's conclusory statements that "the demonstration mode is just a programmable feature which can be used in many different device[s] for providing automatic introduction by adding the proper programming software" and that "another motivation would be that the automatic demonstration mode is user friendly and it functions as a tutorial" do not adequately address the issue of motivation to combine. This factual question of motivation is immaterial to patentability, and could not be resolved on subjected belief and unknown authority. It is improper, in determining whether a person of ordinary skill would have been led to this combination of references, simply to "[use] that which the inventor

taught against its teacher."... Thus, the Board must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion. (emphasis added)

Applicants note that with respect to independent claims 4, 10 and 14, such claims have been amended to incorporate the feature previously recited in claim 17 which has been canceled of the light diffusing layer having a light diffusing material made of organic material particles, as described at page 14, lines 1 and 2 of the specification, for example.

Turning to the rejection based upon the combination of Iwata et al and Miyamoto et al, the Examiner recognizes that "Iwata fails to explicitly disclose the reflecting layer as made of metal and the transmission spectral characteristics of a visible light region of a light diffusing layer and the reflection spectral characteristics of a visible light region of the reflecting layer as of a flat type". Applicants note that such features are recited in each of independent claims 4, 10 and 14, in terms of the utilization of "flat type" or the difference values as recited in such claims. Although the Examiner takes Official notice that metal is a commonly used reflection material for a reflector in a liquid crystal display device, applicants challenge such "Official notice" in relation to the utilization of Miyamoto et al which appears to suggest in relation to Figure 4 at column 10, lines 10 - 17 that the diffusing film is used instead of a reflecting film and a reflective liquid crystal element can be constructed by using a reflective diffusing film when the back lighting 38 and the reflective film 40 are not used. That is, each of independent claims 4, 10 and 14 provide for a metal reflecting layer mounted on a first substrate and a light diffusing layer which is mounted on the second substrate and whether or not Iwata et al discloses a similar structure, the Examiner has recognized that Iwata et al does not disclose the other features as

recited in the independent claims and applicants submit that such deficiency is not overcome by Miyamoto et al.

Applicants submit that Miyamoto et al does not disclose the claimed structure since Miyamoto et al only discloses a diffusing film of a back light. Miyamoto et al discloses three types of diffusing film. That is, the transmissive diffusing film, a semi-transmissive diffusing film and a reflective diffusing film. Applicants submit that a semi-transmissive diffusing film and a reflective diffusing film cannot be used for the light diffusing layer of the claims since the reflected light of the semi-transmissive or reflection diffusing film provides bad influences to a contrast of display. Furthermore, the diffusing films of Miyamoto et al cannot be used for the metal reflecting layer of the claims since the materials are different. Thus, applicants submit that Miyamoto et al cannot be properly combined with Iwata et al in the sense of 35 USC 103 and the suggested combination represents a hindsight reconstruction attempt utilizing the principle of "obvious to try" which is not the standard of 35 USC 103. See, In re Fine, supra.

In accordance with the present invention, both the transmission spectral characteristics of a visible light region of the light diffusing layer and the reflection spectral characteristics of a visible light region of the metal reflecting layer are of a flat type or both have a difference value, as recited in the claims, which features contribute to the present invention and are not disclosed or taught by Iwata and/or Miyamoto et al in the sense of 35 USC 103. That is, irrespective of the Examiner's position, Miyamoto et al only discloses that the transmission spectral characteristics of a visible light region of the transmissive light diffusion film is flat and provides no disclosure or teaching of the combination of a light diffusing layer and a metal

reflecting layer, as claimed, having the transmission spectral characteristics and the reflection spectral characteristics together, as claimed.

In an attempt to overcome this deficiency of Miyamoto et al, the Examiner contends at page 10 of the office action "Although Miyamoto's description of the transmittance and reflectance characteristics applied to a single layer, such a concept may be analogously applied to separate layers as a means of achieving satisfactory color tones and lightness" (emphasis added). Hereagain, the Examiner has engaged in the principle of "obvious to try" which is not the standard of 35 USC 103 and which is contrary to the disclosure of Miyamoto et al which is applied to a diffusing film of a backlight rather than a liquid crystal display panel and in which the semi-transmissive diffusing film does not use both transmittance and reflectance characteristics at the same time. That is, in the transmissive mode, the semi-transmissive diffusing film is not used as a reflection film and the reflectance characteristics is not used and in the reflection mode, the semi-transmissive diffusing film is used as a reflection film and the transmissive characteristics is not used. Thus, the concept of Miyamoto et al is utilization in a transmissive mode or a reflection mode. The Examiner's suggestion is thus contrary to the disclosure and teaching of Miyamoto et al. Thus, the combination of Iwata et al and Miyamoto et al fail to provide the claimed features of the independent and dependent claims of this application and all claims patentably distinguish thereover.

As noted above, by the present amendment, each of independent claims 4, 10 and 14 have been amended to recite the feature of the light diffusing layer having a light diffusing material made of organic particles, which feature is described at page 14, lines 1 and 2 of this specification of this application. Applicants submit that neither Iwata et al nor Miyamoto et al disclose such feature. More particularly,

Miyamoto discloses the utilization of titanium dioxide coated mica 14, 14a, 14b, which is an inorganic material as a light diffusing material in all examples to obtain interference color. Applicants submit that there is no disclosure or teaching in Miyamoto et al of the utilization of organic material particles and any suggestion to utilize organic material particles in place of an inorganic material particles, as disclosed by Miyamoto et al would represent utilizing applicants disclosure against applicant which is not proper. See, In re Lee, supra. Thus, applicants submit that all claims patentably distinguish over this combination of references in the sense of 35 USC 103 and should be considered allowable thereover.

With respect to the addition of Woodgate et al to the combination of Iwata et al and Miyamoto et al, applicants submit that irrespective of the position of the Examiner concerning Woodgate et al, such patent does not overcome the deficiencies of Iwata et al and Miyamoto et al as pointed out above. Additionally, it is not apparent that Woodgate et al is properly utilized both in rejecting claims of this application in light of the PCT filing of this application. In any event, the combination of Woodgate et al with Iwata et al and Miyamoto et al fail to provide the claimed features as set forth in the independent and dependent claims of this application noting, for example that claim 20 recites a range of diameters for the light diffusing material as described at page 17, lines 21 and 22 of the specification, for example, Accordingly, applicants submit that all claims patentably distinguish over the cited art and should be considered allowable.

In view of the above amendments and remarks, applicants submit that all claims present in this application are in compliance with 35 USC 112, and that such claims patentably distinguish over the cited art and should now be in condition for

allowance. Accordingly, issuance of an action of a favorable nature is courteously solicited.

To the extent necessary, applicant's petition for an extension of time under 37 CFR 1.136. Please charge any shortage in the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 01-2135 (501.40631X00) and please credit any excess fees to such deposit account.

Respectfully submitted,



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